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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO.130 OF 1996
Cuttack, this the 4th day of June, 1996

Rabindra Nath Das ... Applicant

Vrs.

Union of India & others ... Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Ans*
- 2) Whether it be circulated to all the Benches of the *Ans*. Central Administrative Tribunal or not?

N.SAHU
(N.SAHU) 4-6-96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 130 OF 1996
Cuttack, this the 4th day of June, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

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Rabindranath Das, aged about 46 years,
s/o late KrushnaChandra Das,
At-Mausima Lane, P.S-Puri Town,
Dist.Puri, presently working as
Deputy Secretary to Government of Orissa,
in Industry Department, Orissa Secretariat,
Bhubaneswar

.....

Applicant

By the Advocates

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M/s J.M.Mohanty &
B.Dash.

-versus-

1. Union of India, represented through its Secretary, Department of Personnel & Training, South Block, New Delhi-110 001.
2. State of Orissa, represented through its Principal Secretary, Panchayati Raj Department, Orissa Secretariat, Bhubaneswar.
3. Principal Secretary, Panchayati Raj Department-cum-Chairman, ORMAS, representing Orissa Rural Development and Marketing Society, constituted by the Panchayati Raj Department, Government of Orissa, Bhubaneswar.
4. State of Orissa, represented through its Chief Secretary, Orissa Secretariat, Bhubaneswar.
5. Secretary Industries, Government of Orissa, Orissa Secretariat, Department of Industries, Bhubaneswar.

6. The Chief Executive & Member Secretary,
ORMAS, Sardar Patel Road,
Unit-II, Bhubaneswar.

7. Sri K.V.Rao, Chief Executive in charge of
ORMAS & Additional Chief Executive of ORMAS,
Unit-II, Bhubaneswar-9

.... Respondents

By the Advocates

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Shri S.C.Samantray,
Addl.C.G.Standing Counsel
(For R-1)

Dr.D.B.Misra &
Mr.N.C.Misra for Rs 2 & 3

Mr.K.C.Mohanty, Govt.Advocate
for State.

M/s P.Routray,A.Patnaik,
K.K.Misra,L.Samal & S.Rath
(For Rs.6 & 7).

O R D E R

N.SAHU, MEMBER(ADMN.) The prayer in this case is to quash Annexure-7
which is a letter issued by the Member Secretary, Orissa Rural
Development & Marketing Society (ORMAS) on 16.11.1995
wherein the sum of Rs.41,000/- drawn as advance towards salary
from 1st May to 3rd November 1995 from ORMAS was requested
to be refunded within one week from the date of receipt of
that letter. This Annexure was stayed by the order of this
Tribunal on 15.2.1996 till the disposal of the application.
It is also prayed that a direction be issued to Respondent No.2,
namely, the Principal Secretary to Government, Panchayati
Raj Department, Orissa, to release the arrear salary of the
applicant for the period from 3.4.1995 to 8.11.1995 with a
further direction to send the LPC of the applicant to

-3-

Respondent No.5, namely, Secretary to Government of Orissa, Industries Department.

2. The undisputed facts are in a brief compass. The applicant belongs to the Indian Administrative Service. He was posted against a cadre post in the rank of Deputy Secretary in the Department of Panchayati Raj. Under the instructions of the General Administration Department in their letter No.6007/AIS.I dated 30.3.1995 the applicant was deputed to ORMAS on foreign service terms and conditions to act as Chief Executive and Member Secretary, ORMAS with effect from the date of his joining. Accordingly, the applicant joined ORMAS on 3.4.1995 forenoon after relinquishing the charge at the same time as Deputy Secretary, Panchayati Raj Department. While he worked as Chief Executive and Member Secretary of ORMAS he did not receive his salary for the period from 3.4.1995 to 8.11.1995. He represented before the General Administration Department to release his salary for the aforesaid period by directing the Panchayati Raj Department. The applicant was also to act as ex officio Deputy Secretary in the Panchayati Raj Department in addition to Chief Executive of ORMAS. He was transferred to the Department of Industries as Deputy Secretary on 9.11.1995. His claim is that he should be paid his salary from 3.4.1995 to 8.11.1995.

2.1 Respondent No.2, Principal Secretary, Panchayati Raj Department, says in his counter affidavit that the applicant had taken the order of the Chairman, ORMAS, on 4.4.1995 to the effect that he would draw advance of Rs.6000/- per month towards his salary pending adjustment on receipt of his LPC from the P.R.Department. Respondent No.2 says that P.R.Department does not owe any liability to pay him the salary for working in ORMAS

-4-

from 3.4.1995 to 8.11.1995. The General Administration Department have informed the Panchayati Raj Department that the applicant was not assigned/deputed to ORMAS by them. Hence they have advised the P.R. Department to draw the salary of the applicant for the aforesaid period against an unspecified post of Deputy Secretary/Joint Secretary available in the IAS cadre of the State.

(Annexure-5 dated 20.11.1995 to the Counter Affidavit of Respondent No.2) Respondent No.2 says that as he was deputed to ORMAS under the orders of the G.A. Department dated 30.3.1995 he is not eligible to get his pay from the P.R. Department for the aforesaid period. It is stated that he has to get his salary from the ORMAS for the aforesaid period. The G.A.D. is competent to depute an IAS officer to foreign bodies. Although there is no notification from the G.A.D. they have actually ordered the applicant to be deputed to ORMAS. It is suggested that deputation of the applicant requires regularisation by G.A.D. by issuing necessary notification.

2.2 While the applicant had taken the orders of the Chairman, ORMAS for drawing his salary, he had not taken orders from Respondent No.2. Respondent No.2 defends the issue of Annexure-7 on the ground that outstanding advance has not been adjusted. He says that the order dated 4.4.1995 Annexure-6 passed by Respondent No.3, namely, Chairman, ORMAS, was not available in the office record of ORMAS. He says that ORMAS should have paid the salary of the applicant on the basis of the LPC sent from the Panchayati Raj Department in letter No.9713/PR dated 28.10.1995 when the applicant himself was the Chief Executive and Member Secretary, ORMAS, a copy of which has been annexed by the applicant as Annexure-8 to the application. In fact, Annexure-8 dated 28.10.1995 is the LPC of the applicant sent by the Panchayati Raj Department to the

-5-

Chief Executive, ORMAS. ORMAS should send the LPC of the applicant to the Industries Department after drawal of salary with effect from 3.4.1995 to 8.11.1995. Respondent No.2 submits that serious irregularities in financial transactions and misappropriation of funds have come to notice on the audit of the accounts of ORMAS for the period from 1.1.1992 to 8.11.1995 in two phases. Respondent No.2, therefore, alleges that the applicant was responsible for misappropriation, misutilisation and irregularities of expenditure to the tune of Rs.819.48 lakhs out of which Rs.332.45 lakhs was suggested for recovery from the applicant. The G.A. Department have also initiated administrative action.

2.3 There is a separate counter by Respondent No.3, the Principal Secretary and Chairman, ORMAS. The sum and substance of the averments of respondent No.3 is that the advance of Rs.41,000/- drawn by the applicant is irregular and against the provisions of the financial rules and the approval under Annexure-6 has been obtained by unfair means and therefore, this advance has to be recovered. Very strong language is used in the counter affidavit by Respondent No.3. Para 21 of the counter affidavit is a sample of how Respondent No.3 views the conduct of the applicant which is extracted below:

"21. That in reply to para 4.1 and 4.12 it is submitted that the contentions of the said para are disputed and denied. The applicant is strongly manipulating to escape and wash his hands from the alleged articles, the Tribunal may please direct him to produce the original sanction memos if any, as the proforma of sanction memos is not at par with the so called approval under Annexure-6 to the original Application. It manifests the criminal propensity of the applicant as immediately after joining in ORMAS without waiting for a few days for the receipt of LPC he could manage to get an

-6-

approval under Annexure-6 by unfair means without observing the normal procedure of relevant financial rules."

2.4 There is no counter by Respondent No.4. Counter by Respondent No.5, the Secretary to Government of Orissa, Industries Department is somewhat sober. It states that LPC of the applicant has not been received from the P.R. Department. Industries Department have requested the P.R. Department to send the LPC of the applicant in letter No.889 dated 18.1.1996. The P.R. Department in letter No.2454 dated 8.3.1996 have intimated that ORMAS will issue the LPC of the applicant. The Industries Department have accordingly requested ORMAS in their letter dated 15.3.1996 to issue the LPC of the applicant.

2.5 The counter of Respondent Nos.6 and 7 states that during the period from 3.4.1995 to 8.11.1995 the applicant while working in ORMAS has drawn advances from them in lieu of salary. No representation was sent by him during the said period either to P.R. Department or to G.A. Department for release of his salary. P.R. Department has replied that there is no order from G.A. Department appointing the applicant as Member Secretary, ORMAS or continuing him as Deputy Secretary-cum-Deputy Director.

3. I have heard the respective counsels and perused the records. I have had the benefit of going through the views expressed by Respondent No.1 Union of India. Paragraphs 2 and 3 of the letter of Shri V.Lakshmi Ratan, Joint Secretary (S&V), D.O.P.T. dated 22.3.1996, which was placed by the learned Additional Standing Counsel, appear to me to have viewed the matter in the correct



perspective and are extracted hereunder:

"2. It has been averred by Shri Das that when he was deputed for service as CEO and Member Secretary, ORMAS, he did not receive his salary either from the Department or from the ORMAS which is an autonomous body constituted by the said Department. The reasons for this are not known. During this period, however, he drew an advance of Rs.41,000/- from the Society for which he has now been sent a notice for refund. It is also seen that the GAD in their letter No.AIS/IV/P 190/95, dated 20.11.1995 addressed to the Panchayati Raj Department, also advised to draw his salary for the relevant period and disburse the same to him.

3. If a member of the service has to seek recourse to a court of law for drawal of his pay as appears to be the case, then this aspect is clearly one that deserves your personal attention for setting right the matter and preventing recurrence of such incidents."

(Emphasis supplied by me)

4. I have carefully considered the submissions. The applicant is a citizen of India and is a Government servant. He belongs to the Indian Administrative Service. By Annexure-1 in pursuance of GAD letter No.6007 dated 30.3.1995 the applicant was deputed to ORMAS on foreign service terms and conditions to act as Chief Executive and Member Secretary with effect from the date of his joining. This is a Government order and not a forged manipulation. Annexure-2 dated 8.11.1995 appoints the applicant as Deputy Secretary to Government, Industries Department. By order dated 8.11.1995 in pursuance of G.A.D. notification the applicant stood relieved of his duties in ORMAS with effect from 8.11.1995. Thus by virtue of P.R.Department Office Order No.584 dated 31.3.1995 issued in pursuance of G.A. Department letter No.6007 dated 30.3.1995, the applicant was deputed to ORMAS to act as Chief Executive and Member Secretary on foreign service terms and conditions which he joined on 3.4.1995. On joining under ORMAS on 3.4.1995 the applicant in a note-sheet dated 4.4.1995 obtained an order of the Chairman, ORMAS for drawal of advance against his salary up to Rs.6000/- per month as it may not be possible

to draw his regular salary in ORMAS till receipt of his LPC. The fact is instead of despatching the LPC in April, 1995, the P.R. Department transmitted the LPC on 28.10.1995. The G.A.D. has no business vide their letter dated 20.11.1995 to object to the applicant's deputation since he was sent to ORMAS only by the G.A.D. by their letter No.6007/AIS.I dated 30.3.1995. If G.A.D. had not regularised this by issuing a notification, it is their lapse. In view of this, I direct Respondent No.4 to ensure that the G.A.D. on the basis of this letter No.6007 dated 30.3.1995 regularise the appointment of the applicant by issuing a notification appointing the applicant to act as Chief Executive and Member Secretary of ORMAS from the date of his joining. G.A.D. shall issue this notification on or before 30th June, 1996.

4.1 It is mentioned during arguments that there is no provision in the Orissa Government Financial Rules to draw salary as advance. The relevant rules governing the drawal of provisional pay for all Government servants are as under:

"Rule-In all cases of transfers, deputations and foreign service the last drawing and disbursing officer of the Government servant should send a copy of the last pay certificate to the new drawing and disbursing officer. Other documents such as the service book are also to be sent in the case of transfers from one Ministry/Department/Office of the Central Government to another. (Rule 81, C.G.A.(R&P)Rules,1983).

In all cases of transfers the responsibility for obtaining his own copy of the last pay certificate from his last disbursing officer shall rest with the Government servant concerned. (Rule 231, C.T.R.)

When the Last Pay Certificate is not available.- When the Last Pay Certificate of the officer transferred/appointed to a new post is not available, provisional payment of pay and allowances can be authorised for a



period of three months at the request of the officer himself in the first instance and can be extended later up to six months on a further request. For this purpose, the Officer concerned should furnish to the Head of the Department/Office a certificate about the pay and allowances, advances, if any, drawn in the previous post and deductions on account of General Provident Fund, Income Tax, refund of advances etc. The officer would be personally responsible for the correctness of the information furnished by him. The provisional pay in the case of transfer, if the new post is higher than the previous post, may be the minimum of the scale of the new post plus special pay if any attached thereto or pay last drawn in the previous post, whichever is more favourable to the officer. The Administrative Ministries/Departments will have full powers in the matter of grant of provisional pay even beyond six months.

(Dept.t of Per.& Trg.O.M.No.7/1/85-Estt.(Pay-I) dated the 18th November, 1985 read with M.F., O.M. No.F.7(15)-E.III(A)/64, dated the 18th May, 1964)."

(Emphasis is supplied by me).

4.2 In the Memorandum of Association of ORMAS, 18(c) says that all the executive powers of the Society shall vest with the Chairman. In view of the above clear provisions in the Rules, the sanction of an ad hoc amount of Rs.6000/- per month as advance in lieu of pay and allowances, by the Chairman on the ground that the applicant had not received his LPC cannot be called irregular or illegal.

4.3 I further direct that Annexure-8, the LPC issued by the P.R. Department to the Chief Executive & Member Secretary, ORMAS be treated as the LPC which will be acknowledged and acted upon by the present Chief Executive & Member Secretary, ORMAS. He shall fix the salary and allowances of the applicant for his tenure in ORMAS on the basis of LPC and on the basis of foreign deputation terms in such cases. Respondent Nos. 3, 6 and 7 shall thereafter prepare the salary bill on the basis of Annexure-8 and such other additional remuneration which the applicant's tenure at

-10-

ORMAS entitles him and adjust the advance of Rs.41,000/- drawn against the said salary bill. Excess drawn by way of advance will be recovered with interest at 12% per annum and any amount found due and payable shall be remitted to the applicant forthwith. This exercise shall be completed before 31.7.1996.

4.4 I hold that Annexure-6 is a legitimate claim before the Chairman, ORMAS for drawing advance of Rs.6000/- per month. The said advance drawn by him from time to time as reflected in the statement cannot be treated as an unauthorised drawal. If there is any excess drawal over and above the salary payable for the month of April, 1995, the excess drawal may be recovered from the applicant with interest at the rate of 12% per annum. This applies also to the drawals for the subsequent months which are as under:

1.5.95	-	Rs.8000/-
2.6.95	-	Rs.5000/-
4.7.95	-	Rs.5000/-
3.8.95	-	Rs.5000/-
1.9.95	-	Rs.5000/-
22.9.95	-	Rs.1000/-
29.9.95	-	Rs.6000/-
3.11.95	-	Rs.6000/-
		<u>Rs.41000/-</u>

The applicant should not have drawn Rs.8000/- per month on 1.5.95 when he had taken permission to draw upto Rs.6000/- per month. The applicant shall explain the circumstances under which he had committed this irregularity as the Secretary of ORMAS to the Respondent No.4, the Chief Secretary, who may examine the explanation and dispose of the same at his level alone. He may consult the Principal Secretary, Panchayati Raj Department, but whatever view he takes on this limited issue shall be final.

4.5 Respondents 3 and 7 shall issue the L.P.C of the applicant to the Industries Department on or before 31.7.1996. The Industries Department (Respondent No.5) in its turn, shall prepare

-11-

the salary bills of the applicant within three weeks of receipt of the said LPC. Annexure-7 is quashed.

4.6 Before parting with the records I would state that there is ~~xxxx~~ confusion ~~xxxxxxxxxxxx~~ in the minds of the Respondents 2, 3, 6 and 7. The salary payable to the applicant is a matter different from the proceedings for alleged financial irregularities. Unless the applicant is suspended and proceeded against in accordance with the Disciplinary Rules, it will be highly improper and illegal to withhold his salary. I will not comment on the draft chargesheet issued to the applicant. The charges appear to be very serious and grave. But this is no ground at all for not issuing the LPC and paying the salary of the applicant for the period he worked. It is a sad day in the history of bureaucracy if a member of the IAS shall have to go to court for drawing his salary for the period he worked as the Union Personnel Ministry have lamented. The whole confusion arose because the applicant is identified as responsible for the alleged financial irregularities and defalcations of ORMAS. If there are such allegations, it should be appropriate to separately investigate them and if substantiated, appropriate action in accordance with law should be taken. I do not find these allegations have anything to do with the simple preparation and despatch of LPC for payment of salary to an IAS officer who worked under orders in ORMAS. Respondents 2, 3 and 7 have mixed up the payment of salary for services rendered with the allegation of financial impropriety committed during applicant's tenure. The only Respondent who

-12-

remained silent and who is not a party to acrimonious contentions in this case is Respondent No.4, the Chief Secretary and it is to him I would like to address two suggestions. The two suggestions are:

One: as the Chief Executive of the Government of Orissa, he should take proper steps to ensure that the allegations are investigated into and the proceedings against the applicant are concluded at the earliest within a stipulated time. This will be in the interests of the officer concerned, the ORMAS, the organisation in which he worked and which it is alleged, he had reduced to bankruptcy. I am constrained to make this suggestion because a substantial portion of the averments by the Respondents 2, 3, 6 and 7 (senior IAS officers) have highlighted the alleged misdemeanours of the applicant as the Member Secretary, ORMAS. This speedy inquiry will bring out the truth to limelight. For completeness of record the Government Advocate, Shri K.C.Mohanty will place before the C.A.T. by 30.4.1997 a report after obtaining instructions from Respondent No.4 about the outcome of the investigation and disciplinary proceedings. One more suggestion is that where inter-Departmental co-ordination is necessary, a Grievances Forum may be set up to which an affected officer like the applicant can always appeal for redressal. This Forum under the aegis of a very senior officer could co-ordinate and resolve more speedily and more effectively than a court of law. If such a forum already exists, then



-13-

the applicant should have exhausted that forum before invoking the writ jurisdiction of this Court.

The application is disposed of. Parties will bear their costs.

Narayan Sahu
(N.SAHU) 4-6-96
MEMBER (ADMINISTRATIVE)

A.Nayak, F.S.